

Consumer Product Safety Commission

§ 1116.6

(c) The manufacturer is—

(1) A party to, or

(2) Is involved in the defense of or has notice of each action prior to entry of a final order, and is involved in the discharge of any obligation owed to plaintiff under the settlement of or in satisfaction of the judgment after adjudication in each of the suits; and

(d) During one of the 24-month periods defined in § 1116.2(a), each of the three actions results in either a final settlement involving the manufacturer or in a court judgment in favor of the plaintiff.

For reporting purposes, a multiple plaintiff suit for death or grievous bodily injury is reportable if the suit involves three or more separate incidents of injury. The reporting obligation arises when at least three plaintiffs have settled their claims or when a combination of settled claims and adjudications favorable to plaintiffs reaches three. Multiple lawsuits arising from one incident involving the same product only count as one lawsuit for the purposes of section 37.

§ 1116.4 Where to report.

Reports must be sent in writing to the Commission's Office of Compliance and Enforcement, Division of Corrective Actions, Washington, DC 20207, telephone (301) 504-0608).

§ 1116.5 When must a report be made.

(a) A manufacturer must report to the Commission within 30 days after the final settlement or court judgment in the last of the three civil actions referenced in § 1116.3.

(b) If a manufacturer has filed a section 37 report within one of the 24-month periods defined in § 1116.2(a), the manufacturer must also report the information required by section 37(c)(1) for any subsequent settlement or judgment in a civil action that alleges that the same particular model of the product was involved in death or grievous bodily injury and that takes place during the same 24-month period. Each such supplemental report must be filed within 30 days of the settlement or final judgment in the reportable civil action.

§ 1116.6 Contents of section 37 reports.

(a) *Required information.* With respect to each of the civil actions that is the subject of a report under section 37, the report must contain the following information:

(1) The name and address of the manufacturer of the product that was the subject of each civil action;

(2) The model and model number or designation of the consumer product subject to each action;

(3) A statement as to whether the civil action alleged death or grievous bodily injury, and, in the case of an allegation of grievous bodily injury, a statement of the category of such injury;

(4) A statement as to whether the civil action resulted in a final settlement or a judgment in favor of the plaintiff; and

(5) In the case of a judgment in favor of the plaintiff, the name of the civil action, the number assigned to the civil action, and the court in which the civil action was filed.

(b) *Optional information.* A manufacturer furnishing a report may include:

(1) A statement as to whether any judgment in favor of the plaintiff is under appeal or is expected to be appealed (section 15 U.S.C. 2084(c)(2)(A));

(2) Any other information that the manufacturer chooses to provide (15 U.S.C. 2084(c)(2)(B)), including the dates on which final orders were entered in the reported lawsuits, and, where appropriate, an explanation why the manufacturer has not previously filed a report under section 15(b) of the CPSA covering the same particular product model that is the subject of the section 37 report; and

(3) A specific denial that the information it submits reasonably supports the conclusion that its consumer product caused a death or grievous bodily injury.

(c) *Statement of amount not required.* A manufacturer submitting a section 37 report is not required by section 37 or any other provision of the Consumer Product Safety Act to provide a statement of any amount paid in final settlement of any civil action that is the subject of the report.

(d) *Admission of liability not required.* A manufacturer reporting to the Commission under section 37 need not admit that the information it reports supports the conclusion that its consumer product caused a death or grievous bodily injury.

§ 1116.7 Scope of section 37 and its relationship to section 15(b) of the CPSA.

(a) According to the legislative history of the Consumer Product Safety Improvement Act of 1990, the purpose of section 37 is to increase the reporting of information to the Commission that will assist it in carrying out its responsibilities.

(b) Section 37(c)(1) requires a manufacturer or importer (hereinafter “manufacturer”) to include in a section 37 report a statement as to whether a civil action that is the subject of the report alleged death or grievous bodily injury. Furthermore, under section 37(c)(2), a manufacturer may specifically deny that the information it submits pursuant to section 37 reasonably supports the conclusion that its consumer product caused a death or grievous bodily injury, and may also include any additional information that it chooses to provide. In view of the foregoing, the reporting obligation is not limited to those cases in which a product has been adjudicated as the cause of death or grievous injury or to those settled or adjudicated cases in which the manufacturer has satisfied itself that the product was the cause of such trauma. Rather, when the specific injury alleged by the plaintiff meets the definition of “grievous bodily injury” contained in § 1116.2(b) of this part, the lawsuit falls within the scope of section 37 after settlement or adjudication. The manufacturer’s opinion as to the validity of the allegation is irrelevant for reporting purposes. The category of injury alleged may be clear from the face of an original or amended complaint in a case or may reasonably be determined during pre-complaint investigation, post-complaint discovery, or informal settlement negotiation. Conclusory language in a complaint that the plaintiff suffered grievous bodily injury without further elaboration raises a presumption that the injury

falls within one of the statutory categories, but is insufficient in itself to bring the suit within the ambit of the statute, unless the defendant manufacturer elects to settle such a matter without any investigation of the underlying facts. A case alleging the occurrence of grievous bodily injury in which a litigated verdict contains express findings that the injury suffered by the plaintiff did not meet the statutory criteria is also not reportable. Should a manufacturer believe that its product is wrongly implicated in an action, the statute expressly incorporates the mechanism for the manufacturer to communicate that belief to the Commission by denying in the report the involvement of the product or that the injury in fact suffered by the plaintiff was not grievous bodily injury, despite the plaintiff’s allegations to the contrary. In addition, the statute imposes stringent confidentiality requirements on the disclosure by the Commission or the Department of Justice of information submitted pursuant to sections 37(c)(1) and 37(c)(2)(A). Moreover, it specifies that the reporting of a civil action shall not constitute an admission of liability under any statute or common law or under the relevant provisions of the Consumer Product Safety Act. In view of these safeguards, the reporting of lawsuits alleging the occurrence of death or grievous injury should have little adverse effect on manufacturers.

(c) Section 37 applies to judgments and “final settlements”. Accordingly, the date on which a civil action is filed or the date on which the product that is the subject of such an action was manufactured is irrelevant to the obligation to report. A settlement is final upon the entry by a court of an order disposing of a civil action with respect to the manufacturer of the product that is the subject of the action, even though the case may continue with respect to other defendants.

(d) A judgment becomes reportable upon the entry of a final order by the trial court disposing of the matter in favor of the plaintiff and from which an appeal lies. Because section 37(c)(2) specifies that a reporting manufacturer